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VIA FEDERAL EXPRESS

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
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Re: *Wireless One Network's Petition for Arbitration with Sprint Florida*  
Docket No. 971194-TP

Dear Ms. Bayo:

Please find enclosed for filing the original and seventeen copies of each of the following:

1. Wireless One Network, L.P.'s Post Hearing Brief, and
2. Wireless One Network L.P.'s Proposed Findings of Fact and Conclusions of Law.

Also enclosed is a double-sided, high density diskette containing the Post Hearing Brief and Proposed Findings of Fact and Conclusions of Law. These documents were formatted as WordPerfect for Windows under the Window 95 operating system.

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Very truly yours,

William A. Adams

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BEFORE  
THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In Re: Petition by Wireless One Network, L.P., )  
for Arbitration of Certain Terms and Conditions )  
of a Proposed Agreement with Sprint Florida, )  
Incorporated Pursuant to Section 252 of the )  
Telecommunications Act of 1996. )

Docket No. 971194-TP

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*Wireless One Network, L.P.'s  
Post Hearing Brief*

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*I. Statements of Wireless One's Position*

Pursuant to the Prehearing Order and Rule 25-22.056(3), Florida Administrative Code, Wireless One Network, L.P. ("Wireless One") provides the following post hearing statement of its position on the issues in this case.

**ISSUE 1**

**Should Sprint be required to pay Wireless One tandem interconnection, transport, and end office termination rates for calls originating on Sprint's network and terminating on Wireless One's wireless network? If not, what are the appropriate elements of compensation?**

\* \* \* \* \*

Wireless One's telecommunications network contains tandem offices, transmission facilities, and end office-equivalent cell sites over which Sprint originated calls will be transported and terminated. 47 C.F.R. §§ 51.701(c) and (d). Sprint is required to compensate Wireless One for the use of each of these facilities at the same rate that it charges Wireless One. 47 U.S.C. §§ 251(b)(5) and 252(d)(2)(A)(i); 47 C.F.R. § 51.711(a)(1).

\* \* \* \* \*

**ISSUE 2** (as revised by Staff):

**With respect to land-to-mobile traffic only, do the reciprocal compensation rates negotiated by Wireless One, Inc. [sic] and Sprint-Florida, Inc., apply to intraMTA calls from the originating land line end-user to Wireless One's end office switch, or do these rates apply from the point of interconnection between Wireless One and Sprint to Wireless One's end office switch?**

\* \* \* \* \*

There is no dispute that the agreement termination rates apply from the point of interconnection to termination. The Reverse Option charge, which Wireless One pays for intraMTA calls from originating end users to the point of interconnection, is a term and condition of interconnection that cannot include originating access charges.

\* \* \* \* \*

*II. Issue 1:*

**Should Sprint be required to pay Wireless One tandem interconnection, transport, and end office termination rates for calls originating on Sprint's network and terminating on Wireless One's wireless network? If not, what are the appropriate elements of compensation?**

*A. Introduction*

The evidence in this proceeding undeniably establishes that Wireless One has constructed a vast and complex telecommunications network in Florida's Ft. Myer's LATA – so vast and complex, in fact, that it is functionally equivalent to Sprint-Florida, Inc.'s ("Sprint") traditional wireline network. Wireless One witness Francis J. Heaton described in exacting detail Wireless One's network which, like Sprint's, consists of tandems and a multitude of end-office equivalent cell sites all connected either by a proprietary microwave network, leased T-1 lines, or both. See Confidential and Proprietary Prefiled Testimony of Francis J. Heaton, Wireless One Network, L.P. Arbitration Exhibit 1.0 at page 15, l. 17 through page 21, l. 22. Indeed, the equivalency of the two networks is readily apparent upon even a cursory glance at the maps depicting both carriers' network in the Ft. Myer's LATA. See Exhibits FJH Exhibits 1-4. Thus, just as Sprint is entitled to charge for tandem switching, transmitting and terminating Wireless One's calls on its

network, Wireless One, by law, also is entitled to charge for tandem switching, transmitting and terminating Sprint's calls on its network, at the same rates that Sprint charges, as discussed more fully below.

***B. Sprint Is Obligated Under the Telecommunications Act of 1996 and the FCC's Rules Applicable to CMRS Providers to Compensate Wireless One for Transporting and Terminating Sprint Traffic on Its Network.***

The Telecommunications Act of 1996 (47 U.S.C. § 251, et seq.) (the "Act") imposes a clear duty upon Sprint to establish reciprocal compensation arrangements with Wireless One for the "transport and termination" of calls (47 U.S.C. § 251(b)(5)) under terms and conditions that allow each carrier the "mutual and reciprocal" recovery of its associated "costs." 47 U.S.C. § 252(d)(2)(A)(i).

In its rules applicable to commercial mobile radio service ("CMRS") providers,<sup>1</sup> like Wireless One, the Federal Communication Commission ("FCC") defines transport as the transmission and any necessary tandem switching of local telecommunications traffic from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC. 47 C.F.R. § 51.701(c). The FCC defines termination as the switching of local telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, for delivery of such traffic to the called party's premises. 47 C.F.R. § 51.701(d). Thus, a carrier terminating traffic on another carrier's network is responsible for compensating the carrier for the

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<sup>1</sup> Although 47 C.F.R. §§ 51.701 and 51.711(a)(1) and other rules were vacated by the Eight Circuit Court of Appeals, they were not vacated as to CMRS providers. Thus, these provisions are applicable in this proceeding. See *Iowa Utilities Board v. Federal Communications Commission*, 120 F.3d 753 (8th Cir., July 18, 1997).

use of up to three distinct network components: (1) the tandem switch, (2) transmission facilities, and (3) end office termination.

When the CMRS provider is transporting and terminating LEC-originated traffic on its network, the FCC has determined that the LEC must provide it symmetrical reciprocal compensation under 47 C.F.R. § 51.711(a)(1).<sup>2</sup> In other words, the CMRS provider is to charge the same rates that the LEC charges it for transporting and terminating calls.

This arbitration presents an issue that has not been decided by the Florida Public Service Commission ("Commission") previously. A similar issue has come before the Commission on two separate occasions involving non-CMRS interconnection in which the Commission interpreted the provisions of the Act consistent with the FCC's rules, but in which it found that the requesting carrier's facilities were not "equivalent" and thus not entitled to symmetrical transport rates.<sup>3</sup> That is not the situation here.

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<sup>2</sup> 47 C.F.R. § 51.711 provides in part:

(a) Rates for transport and termination of local telecommunications traffic shall be symmetrical...

(1) For purposes of this subpart, symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of local telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same service.

<sup>3</sup> In the *MFS/Sprint* arbitration, MFS did not use a tandem/end office switching hierarchy in the service area in question, but claimed that its single switch combined end office and tandem switching functionality. *In Re: Petition by Metropolitan Fiber Systems of Florida, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with Central Telephone Company of Florida and United Telephone Company of Florida Concerning Interconnection and Resale under the Telecommunications Act of 1996*, Docket No. 960838-TP (Order No. PSC-96-1532-FOF-TP, issued December 16, 1996). The Commission found that MFS did not employ a different technology than Sprint and that, because MFS maintained only one switch, it technically could provide no transport and was not entitled to reciprocal compensation for transport.

In the *MCI/Sprint* arbitration, MCI provided no details as to the number of tandem switches its network would employ, if any. *In Re: Petition by MCI Telecommunications Corporation for Arbitration with United Telephone Company of Florida and Central Telephone Company of Florida Concerning Interconnection Rates, Terms, and Conditions, Pursuant to the Federal Telecommunications Act of 1996*, Docket No. 961230-TP (Order No. PSC-97-0294-FOF-TP, issued March 14, 1997).

Minnesota has decided the same issue as presented in this case and ruled that the wireless network configuration is functionally equivalent to the tandem/end office hierarchy and deserving of the higher termination rates being sought by Wireless One in this case. See *In the Matter of the Petition of AT&T Wireless Services, Inc. for Arbitration of an Interconnection Agreement with US West Communications, Inc., Pursuant to 47 U.S.C. § 252(b)*, Docket No. P-421/EM-97-371, 1997 WL 634608 (Minn. P.U.C., July 30, 1997), at 7-9. This Commission should reach the same results here.

***C. The Record Unequivocally Demonstrates That Wireless One's Wireless Network is Functionally Equivalent to Sprint's.***

This issue is before the Commission on arbitration because Sprint would agree only to provide Wireless One compensation for end office termination, narrowly reasoning that Wireless One's network contains but one switch (its DMS250, which Sprint would have the Commission believe is an end office switch), and that the network provides no transport functions (*i.e.*, tandem switching and transmission). See Tr. 111, ll. 1-5, Tr. 114, ll. 7 through 115, l. 4, Tr. 427, ll. 15-25. As discussed more fully below, Sprint's position became unsupportable during the course of these proceedings, in which its own witnesses admitted that Wireless One's network indisputably provides transmission functions (Tr. 351, ll. 1-4; Tr. 426, ll. 17-20, Poag Deposition (Exhibit 3) at 28, ll. 18-21), and that Wireless One's DMS250 is a tandem switch (Tr. 347, ll. 20-21). Given these admissions, Sprint's only recourse is to argue that Wireless One's cell sites are not end offices. Poag Deposition (Exhibit 3) at 28, ll. 12-25. However, this argument also is of no avail.

Sprint's admission that the DMS250 is a tandem switch and as such is incapable of terminating calls to end users (Tr. 347, ll. 7-9, 20-21) by necessity requires some other network component on Wireless One's system to provide this terminating function. Indeed, Sprint

admitted that calls could not be terminated on Wireless One's network without the presence of the cell site, just like calls on Sprint's system cannot be terminated without an end office (Tr. 349, l. 22 through 350, l. 5; Tr. 430, ll. 7-12). It is plain that the cell site is responsible for terminating calls on the wireless network and, thus, that the cell site is the functional equivalent of a wireline end office. On the basis of these admissions alone, the Commission should find that Wireless One's network contains a tandem switch, transmission facilities, and end office termination facilities and, thus, that Wireless One is entitled to be compensated for the use of each in terminating calls originating on Sprint's network, as required by 47 C.F.R. § 51.711(a)(1)

Sprint's basis for arguing that Wireless One's cell site is not an end office is the physical absence of various equipment and features from Wireless One's cellular end offices that are present in Sprint's end offices. In making this argument, Sprint misunderstands the standard upon which determinations of reciprocal compensation are based. Such an "apples-to-apples" comparison of the two end offices runs afoul of the FCC's rules governing CMRS interconnection which explicitly provide that a non-LEC end office need not be identical to the LEC's, but only that it be an "equivalent facility." See 47 C.F.R. §§ 51.701(c) and 51.701(d). In this vein, the FCC explicitly instructed the states to "consider whether new technologies (e.g., fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch and thus, whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch." See *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98 (August 8, 1996) ("Local Competition Order"), ¶ 1090 (Emphasis Added)

Each of Wireless One's network components is discussed in greater detail below

**1. *Wireless One's Network Contains a Tandem Switch.***

Wireless One's network uses a Northern Telecom DMS250 which meets Bellcore's following definition of a tandem:

A switching system in the message network that establishes trunk-to-trunk connections. Tandems may be further identified as local tandems, LATA tandems or access tandems.

Tr. 207; ll. 14-17 Bellcore Manual SR-TAP-000191, Page 12-18. Wireless One's witness, John Meyer, provided uncontroverted testimony that Wireless One's DMS250 switch establishes such "trunk to trunk interconnection to end offices, interexchange carriers points of presence, and other carriers tandems and end offices." Tr. 113, ll. 16-19. That Wireless One's DMS250 performs this trunk-to-trunk connectivity is supported by the testimony of Wireless One's witness, Francis J. Heaton. See Confidential and Proprietary Prefiled Testimony of Francis J. Heaton (Wireless One Network, L.P. Arbitration Exhibit 1.0) at 16, ll. 4-19, 17, l. 22; 18, ll. 1-22, 19, ll. 1-22; at 20, ll. 1-22; and 21, ll. 1-22; Tr. at 232-237. Indeed, Sprint's own witnesses recognize that the DMS250 performs switching functions (Poag Deposition (Exhibit 3) at 28, ll. 12-15; Tr. 426, ll. 14-16), does not provide line connections to end users (Tr. 347, ll. 7-9) and, as such, is a tandem switch. (Tr. 347, ll. 20-21).

**2. *Wireless One's Network Provides Transmission Facilities.***

It is not disputed in this proceeding that Wireless One's network contains transmission facilities over which Sprint-originated calls would be transmitted from the Wireless One tandem for termination at Wireless One's cellular end office. Wireless One witness John Meyer, explained that once a call is switched at Wireless One's tandem, it is "transmitted either over the company's proprietary microwave transmission facilities, a leased T-1, or a combination of both to the

cellular end office serving the called party.” Tr. 102, l. 17 through 103, l. 7. This was confirmed by Mr. Heaton, who elaborated in detail on the transmission facilities connecting Wireless One’s tandems to its many end offices. See Confidential and Proprietary Prefiled of Francis J. Heaton (Wireless One Network, L.P. Arbitration Exhibit 1.0) at 16, ll. 4-19; 17, l. 22; 18, ll. 1-22; 19, ll. 1-22; at 20, ll. 1-22; and 21, ll. 1-22; Tr. at 232-237. Moreover, Sprint’s witnesses readily admitted the presence of such transmission facilities in Wireless One’s network between the DMS250 tandem and its cellular end offices. Tr. 351, ll. 1-4; Khazraee Deposition (Exhibit 2) at 40, ll. 1-25; Tr. 426, ll. 17-20; Poag Deposition (Exhibit 3) at 28, ll. 18-21.

As a result, Sprint recognizes that the determinative issue in this proceeding is whether Wireless One’s cell sites are functionally equivalent to an end office. Under Sprint’s own reasoning, if Wireless One’s cell sites are deemed to be end offices, Wireless One’s DMS250 switch would be considered a tandem switch which, when coupled with the transmission facilities between the DMS250 and end office, would meet the FCC’s definition of transport, entitling Wireless One to recover the cost of tandem switching and transmitting Sprint calls on its network. Tr. 427, ll. 19-25.

### 3. *Wireless One’s Cell Sites Provide End Office Functionality*

Wireless One’s cell sites satisfy Bellcore’s following definition of an end office:

A switching system in the message network that establishes line-to-line, line-to-trunk and trunk-to-line connections and provides dial tone to customers.

Tr. 197, ll. 9-13; Bellcore Manual SR-TAP-000191, Page 12-5. Wireless One’s witnesses provided uncontroverted testimony that Wireless One’s and Sprint’s end offices are functionally equivalent because each provides line termination and dial tone to the end user, which cannot be done through the DMS250 or by any other means. See Tr. 104, l. 7 through 109, l. 12; Tr. 114, l.

7 through 15, l. 4; Tr. 116, l. 6 through 120 l. 17; Tr. 252, ll. 4-8. Indeed, Sprint's witnesses agreed that Wireless One's tandem (the DMS250) cannot provide this line connectivity for call termination (Tr. 346, ll. 7-9) and that this call termination cannot be accomplished without the cell site end offices. Tr. 349, l. 22; Tr. 300, l. 5. These admissions should end the inquiry as to whether Wireless One's cell sites are the functional equivalent of Sprint's end offices – Wireless One's cell sites provide line connectivity to the end user and, as such, are considered end offices under the Bellcore definition.

Not surprisingly, Sprint did not offer an expert on wireless technology to dispute the assertions of Wireless One expert, John Meyer, because it realized that an expert would have confirmed Mr. Meyer's testimony. Instead, Sprint offered the testimony of its two primary Commission regulatory personnel that admittedly were not experts in wireless technology. Sprint rebuttal witness Sandra Khazraee admitted on cross examination at hearing that: She is not an expert in wireless network planning and engineering (Hearing Tr. at 341); her work experience was limited to the wireline part of the business (Id.); she is not familiar with the Nortel line interface module contained in the Wireless One's cell sites (Id. at 342); and she does not dispute John Meyer's testimony that Wireless One's DMS250 has much more call processing power than Sprint's DMS200 (Id.). Indeed, Sprint's counsel admitted that she is not an expert in wireless networking and planning. (Id. at 326.) Sprint's other witness, Ben Poag, also admitted that he is not an expert in wireless networks or wireline networks (Hearing Tr. at 408). He has not had any direct landline network experience since 1968, before cellular networks were in existence, when he worked as an outside plant engineer. (Id. at 408). He does not know what pieces of hardware a wireless network has that would be different from Sprint's network. (Id.) Sprint's counsel admitted that Mr. Poag is "clearly not an expert" in wireless or wireline technology. (Id. at 368).

Despite this lack of expertise, and over Wireless One's objections,<sup>4</sup> Ms. Khazraee and Mr. Poag proceeded to testify about the functional equivalence of Wireless One's cellular end offices. Since their testimony was not based on expertise, both provided the self serving opinion that Wireless One's cellular end offices did not provide the functional equivalency of Sprint's end offices. Those opinions should not be given any weight in this proceeding.

Accordingly, the Commission should disregard Sprint's misleading argument that the cell sites do not provide end office termination functions because they contain no switching mechanism. A switching mechanism physically located at the cell site is not required to meet the accepted Bellcore definition of an end office, as most recently recognized by the Minnesota Public Utilities Commission in *AWS, supra*, in which it found the cellular provider's cell site control switch and cell sites worked together to perform end office functions, a finding contemplated by the FCC's functional equivalency standard. In order to accommodate mobile customers, the switching functions in a cellular network must be performed at a single central location as is explained in more detail below, when discussing the call processor. Tr. 251, ll. 17-22

Sprint also alleges that Wireless One's cell sites are more akin to a subscriber line carrier and, thus, are not functionally equivalent to a Sprint end office. Mr. Meyer stated that such a characterization is grossly misleading, noting that:

The purpose of a line concentrator on Sprint's network is to enable it to provide service to a local community without 100% dedicated circuitry back to the serving end office. This "point-to-point" connection is functionally the same as the "remote transponders" that Wireless One uses in its wireless network as a means of serving customers beyond the reliable coverage area of the primary

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<sup>4</sup> If a witness does not possess "scientific, technical, or other specialized knowledge" under Florida Evidence Code 90.702, he/she cannot testify in the form of an opinion. The Commission allowed the opinion testimony indicating that the lack of expertise would go to the weight given the evidence. Wireless One contends that the admission of this evidence for Ms. Khazraee and Mr. Poag was error and reserves all rights to seek review of those decisions.

antennae system of its serving end office. Both mechanisms are an extension of the end office.

Tr. 120, ll. 4-10. He elaborated that:

Sprint's interconnection to these outside service extension devices relies on the Nortel LCM (Line Concentrator Module) at the end office; whereas the Wireless One interconnection to such devices relies on the Nortel LIM (Line Interface Module) at the end office. (See direct testimony). The end offices, which provide for multi-point connectivity, are required for line termination to the end user, with or without this auxiliary equipment.

Tr. 120, ll. 12-17. Indeed, even Sprint's witnesses admitted that, while a wireline network can operate without a line concentrator (subscriber line carrier), a cellular network cannot operate without its cell site. Poag Deposition (Exhibit 3) at 110, l. 24 through 111, l. 6; Tr. 425, ll. 22-24; Tr. 430, ll. 7-9; Tr. 438, l. 24 through 349, l. 3; Tr. 349, l. 22 through 350, l. 2; Khazraee Deposition (Exhibit 2) at 35, l. 23 through 36, l. 17.

Sprint's other attempts at discounting the end office functionality of Wireless One's cell sites, *i.e.*, that Wireless One's end offices lack a call processor and that Sprint is unable to terminate calls at Wireless One's end offices, also are without merit.

Wireless One witness Meyer explained that, because of the technological distinctions between Wireless One's wireless network and Sprint's wireline network, the call processor cannot be housed in each of Wireless One's cellular end offices and instead must be housed at a single central location. Tr. 105, l. 13 through 108, l. 15; Tr. 116, l. 6 through 117, l. 10.

The call processor may be housed in Sprint's end office because the fixed location of wireline end users enables Sprint to connect them via dedicated hardline facilities to a particular end office. By contrast, the mobile nature of a wireless end user prevents service by dedicated lines or end offices because the end user will be traveling through areas served by multiple end

offices. Thus, the technology of a wireless network requires the mobile end user to "register" his or her location with a central call processor. Once that registration is made, the central call processor provides relevant information to all end offices in the end user's vicinity so that the end user may be connected to the end office in the area with the best available radio frequency for call origination and termination purposes. The wireless end office is required to originate the call, terminate the call, and provide the interface to the mobile unit for call requirements and features *Id.*

Just as these functions cannot be handled by Wireless One's DMS250 alone, Sprint's DMS200 cannot terminate a call to its wireline end users without its end offices. Whether the call processor is placed at a common central location in the wireless network, or at multiple individual locations in the wireline network, does not change the fact that the end offices of each network function to terminate calls to their respective end users. This distinction recognizes nothing more than that a different technology must be employed to serve mobile wireless customers than fixed wireline customers. *Id.*

Wireless One adamantly disagrees with Sprint's position that Sprint cannot terminate calls to Wireless One's end offices. Sprint could deliver traffic to Wireless One's end offices so long as it provides the SS7 signaling necessary for call origination and termination. Because Wireless One considers its end offices to be the functional equivalent of the wireline end offices, Wireless One would charge Sprint symmetrical end office termination rates if Sprint were to terminate traffic at Wireless One's end office. Tr. 242, ll. 10-19; Tr. 243, l. 5 through 245, l. 10, Tr. 247, ll. 18-22; Tr. 252, ll. 13-19.

To terminate a call from a Sprint end office to a Wireless One end office, a voice path (or trunk termination) and a SS7 end-to-end signaling connection is needed. Sprint is able to provide

the voice path via their end offices; however, Sprint has not equipped its Ft. Myers LATA end offices to deliver SS7 signaling, including Automatic Number Identification ("ANI"). However, it may be technically feasible to deliver the SS7 signal over the tandem interconnection, where it passes now, and send the voice traffic over the end office interconnection. Tr. 247, 1-18 through 250, 1-4.

*D. Agreement Language*

On this issue, the competing language that has been proposed by the parties in the agreement is not that far apart. Wireless One would be willing to use Sprint's language so long as it is clarified that when Sprint terminates traffic at Wireless One's tandem office, it will receive transport and termination rates, and when Sprint terminates traffic at Wireless One's end offices, it will receive end office termination rates.

*III. Issue 2 (as revised by Staff)*

**With respect to land-to-mobile traffic only, do the reciprocal compensation rates negotiated by Wireless One, Inc. [sic] and Sprint-Florida, Inc., apply to intraMTA calls from the originating land line end-user to Wireless One's end office switch, or do these rates apply from the point of interconnection between Wireless One and Sprint to Wireless One's end office switch?**

A. *Reverse Option Has Always Been a Part of the Interconnection Relationship Between Wireless One and Sprint.*

The above issue was drafted by Staff and adopted in the Prehearing Order over Wireless One's objection.<sup>5</sup> The scope of this issue has never been concretely resolved, with the most dispositive statement being made by Commissioner Clark during the merit hearing:

COMMISSIONER CLARK: I would urge everyone to look at the way the issue is phrased, and what it says is, what characterizes the relationship between these two companies, what is the interconnection? Is it simply between Wireless One and Sprint, and Sprint to Wireless One's end office switch, or does it include all the way back to the originating land line end user to Wireless One's end office switch? We are determining what the relationship is, and I would presume if you determine the relationship goes all the way back to the customer, then there is no RTOB or whatever it is, reverse toll billing option, and we would have to address that in terms of revenue. I would assume Sprint would come in if it adversely affected their revenue. If, on the other hand, we say that it is a small -- it is the interconnection from point of interconnection between Wireless One and Sprint to Wireless One's end office switch, then you reach a different result, and that's what we should be determining in this proceeding, is *what does the interconnection consist of.*

Tr. 69, l. 23 through 70, l. 18 (emphasis added).

It is and always has been Wireless One's position that its "interconnection consists of" the Reverse Option charge, which is paid to compensate Sprint for traffic from Sprint's end users to the point of interconnection. However, unlike with its traffic from the point of interconnection to Wireless One's end office, Sprint has refused to negotiate the Reverse Option charge as a part of

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<sup>5</sup> As detailed Wireless One's Motion for Reconsideration filed on November 20, 1997, the imposition of this issue on Wireless One violates federal law and Wireless One's right to due process by permitting Staff to frame the issue to be arbitrated in this proceeding, and by effectively requiring Wireless One to prosecute Staff's reformulated issue through previously filed testimony that addresses the issue as presented by the parties. See 47 U.S.C. § 252(b)(4)(A) ("The State commission shall limit its consideration of any petition ... (and any response thereto) to the issues set forth in the petition and in the response..."). Wireless One presents this brief without waiving the issues and arguments presented in its testimony and Prehearing Statement filed November 7, 1997 and explicitly reserves all rights, both administrative and judicial, to seek reconsideration and appeal of the ruling.

its interconnection agreement with Wireless One, taking the position that it simply will continue to charge the exorbitant tariffed rate. As Wireless One witness Frank Heaton testified at the hearing:

On the pricing of the reverse option charge, . . . Sprint has refused to replace its interconnection and mobile services tariff provision, G7, for land-to-mobile connections, with FCC compliant pricing in our interconnection agreement as it has agreed to do with respect to its interconnection of mobile services tariff provisions G4 and G5, which are the only other usage-sensitive rates in our carrier-to-carrier relationship.

Tr. 259 ll. 15-24. G4 and G5 are the tariffed rates for Type 2A and 2B interconnection that have been replaced by the transport and termination rates.

Sprint surely will argue in its post hearing brief, as it has previously, that the issue posed by Staff should be answered such that only the rates from the point of interconnection to Wireless One's end office are at issue and, because those rates already have been negotiated, this matter is closed. If that were the case, then why did Wireless One bring this arbitration petition challenging the Reverse Option rate? Sprint knows full well that Wireless One was forced to initiate this arbitration proceeding because Sprint refused to negotiate inclusion of the tariffed Reverse Option charge in the agreement. To be competitive in the expanding local service market, Wireless One needs relief from this exorbitant charge, which is based on originating access which the FCC has declared can no longer be charged for intraMTA calls.<sup>6</sup>

Indeed, Sprint's construction of this issue, if adopted by the Commission, would deprive Wireless One of the right to frame its own issues for arbitration under 47 U.S.C. § 252(b)(4)(A), and would deprive it of due process under the law. See fn. 5. Such a construction cannot stand. To avoid the legal infirmities of Sprint's construction, Staff's issue only can be construed,

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<sup>6</sup> IntraMTA refers to telecommunications traffic between a LEC and CMRS provider that, at the beginning of the call, originates and terminates in the same Major Trading Area, as defined in § 24.202(a) of this chapter. 47 C.F.R. § 51.701(b)(2). MTA in the brief refers to Major Trading Area.

consistent with Commissioner Clark's statement, as providing relief commensurate with the scope of the interconnection relationship between the carriers, which encompasses only carrier-to-carrier charges and excludes from consideration only those charges that Sprint charges its end users.<sup>7</sup> This construction appropriately divides the carrier-to-carrier charges at issue into those that compensate for transporting calls (1) from the point of interconnection between the parties to Wireless One's termination location, and (2) from Sprint's end user to the point of interconnection. Neither Sprint nor Wireless One have ever disputed under the first prong of the issue that the reciprocal compensation rates already negotiated as a part of the interconnection agreement apply, in lieu of the tariffed rates, to intraMTA traffic transported between the point of interconnection and the terminating end office.

The dispute lies in the second prong, and whether the tariffed Reverse Option charge should be included in this interconnection agreement. Wireless One witness Heaton provided uncontroverted testimony that the Reverse Option charge has been a term and condition of the parties' interconnection relationship since the initial physical interconnection of the two networks at the inception of Wireless One's service. Wireless One has always elected Sprint's Reverse Option charge for land-to-mobile call completions. Sprint has never charged its customers an intraLATA toll charge for any land-to-mobile calls since cellular operations commenced in 1990. The Reverse Option charge is part of the same mobile services section of Sprint's tariff that has governed the rest of the parties' interconnection relationship over the years, is an integral part of the interconnection relationship, and should be included with the other terms and conditions of the

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<sup>7</sup> Commissioner Clark excluded from the scope of this proceeding only "what rate is charged to the *end customer* of Sprint." See Prehearing Transcript, pages 44 and 56 (emphases added).

interconnection relationship that now will be governed by agreement rather than tariff. Tr. 254, ll. 4-16.

Indeed, the interconnection agreement itself makes clear that the Reverse Option charge should be considered a term of interconnection and included in the interconnection agreement. It provides:

**Section I. Scope of this Agreement**

This Agreement, including Parts A, B, and C, specifies the rights and obligations of each party with respect to the establishment, purchase, and sale of *local interconnection*.

Interconnection Agreement, Part A, Section I, 1.1 (emphasis added) Local interconnection is not limited just to the terminating side of the call, but includes the originating side, as well.

The FCC recognized this principle in implementing its rules governing local interconnection between LECs and CMRS carriers, providing that the definition of local calls includes calls that both are originated and terminated within the Major Trading Area. See 47 C.F.R. § 51.701(b)(2) (“...[L]ocal telecommunications traffic means ... telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area...”)

***B. The Reverse Option Charge Results in Significant Interconnection Economic Asymmetry***

It is important that the Commission understand the fundamental inequities of the economics of the Reverse Option traffic relationship. This is best explained by using an example. Let's assume that a Wireless One mobile customer located in Ft. Myers in Lee County is having a conversation with a Sprint fixed customer in Everglades City in eastern Collier County, which is a toll route under Sprint's state tariff. If the Wireless One customer originates the call, there are no

incremental origination costs for the call because it is within Wireless One's local calling area. If the Sprint customer originates the same call, Wireless One pays Sprint the Reverse Option tariff rate of \$0.0588 per minute for the origination of the call.

Whichever party originates the call, the call travels over the same facilities. The call would travel through Sprint's local loop, through Sprint's end office switch, over Sprint's transmission facilities to Sprint's tandem switch, through trunks interconnecting with Wireless One's tandem switch, over Wireless One's transmission facilities, through Wireless One's cellular end office, and then by radio frequency to a cellular phone, or just the reverse, depending on who originates the call. Tr. 243, l. 21 through 244, l. 15.

This points up the significant asymmetry in compensation for the identical call depending only on whether a land or mobile caller originates the call. If the land caller originates the call, Wireless One pays Sprint \$0.0588 per minute of use and if the mobile caller originates the call, there is no toll charge for the traffic. This asymmetry is the direct result of the wireless local calling areas being much larger than the landline. The result of the asymmetry is that wireless carriers, like Wireless One, are at a significant economic disadvantage by having to provide a one way flow of revenue to the incumbent local exchange company monopolist, like Sprint.

The FCC's Local Interconnection Order rectified this asymmetry by recognizing that, for purposes of the interconnection relationship between land and mobile carriers, the local calling area includes the entire MTA (47 C.F.R. 51.701(b)(2)) and prohibited LECs from imposing access charges for intraMTA traffic. See FCC Interconnection Order at ¶ 1036 ("Accordingly, traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges."); 47 C.F.R. 51.701(b)(2).

Sprint's argument that the local service area defined by a state commission applies to calls originated on the LEC's network is without merit when applied to LEC/CMRS traffic. The state-defined local service area applies only to the exchange of traffic between LECs or between LECs and non-CMRS providers. 47 C.F.R. § 51.701(b)(1). The United States Court of Appeals for the Eighth Circuit upheld the FCC's jurisdiction to dictate the LEC-CMRS local calling area and to require that LECs and CMRS providers not charge access for the intraMTA exchange of traffic. Citing 47 U.S.C. §§ 152(b) and 332, it stated:

Because Congress expressly amended section §152(b) to preclude state regulation of entry of and rates charged by Commercial Mobile Radio Service (CMRS) providers, see 47 U.S.C. §§ 152(b) (exempting the provisions of section 332), 332(c)(3)(A), and because section 332(c)(1)(B) gives the FCC the authority to order LECs to interconnect with CMRS carriers, we believe that the Commission has the authority to issue the rules of special concern to CMRS providers.

120 F.3d at 800, fn. 21.

*C. Sprint's Position That Wireless One Elects the Reverse Option in Lieu of Extending Facilities is Simply Wrong.*

It is Sprint's position that the Reverse Option charge is not a term of interconnection, but that Wireless One chooses the Reverse Option charge in lieu of extending its facilities to Sprint end offices, which would afford Sprint customers the ability to place a local call to Wireless One customers. Tr. 381, l. 22 through 382, l. 2. Sprint's allegations simply are untrue. Wireless One does maintain direct two-way end office interconnections with Sprint. Tr. 242, ll. 10-19. Sprint's argument that it does not send any traffic over these interconnections because Wireless One does not have locally rate centered NXX codes in certain wireline local calling areas is also without merit and ignores that Sprint simply may reprogram its switches to recognize Wireless One's

NXX codes over all of the end office interconnections. The provision of such "distributive NXX codes" would allow land-to-mobile calls from a Sprint exchange with a Type 2B end office interconnection to Wireless One to be terminated over the end office interconnection and allow for the traffic to be transported by Wireless One to its customer, wherever located. Tr. 246, l. 3 through 247 l. 17. Thus, Sprint's own actions, or rather inaction, has prevented Sprint from terminating calls at Wireless One's end offices, with the ulterior motive to require Wireless One to continue to pay the exorbitant Reverse Option charge.

*D. The Reverse Option Rate*

Because the Reverse Option charge is a term and condition of the parties' interconnection relationship and, thus, properly before the Commission, the question remains as to the appropriate price for the Reverse Option on an intraMTA basis only. On Staff's cross-examination, Wireless One witness Frank Heaton made clear that Wireless One's position is that it should not have to pay anything for the traffic. If, however, the Commission finds that Wireless One should pay something, it is willing to do so but not at the current rate level. Tr. 307, ll. 9-13

The Reverse Option for intraMTA calls must be repriced consistent with the terms of the Telecommunications Act of 1996 and the FCC Order implementing it. All CMRS calls originated and terminated in an MTA are considered as local in nature under 47 C.F.R. § 51.701(b)(2) and no access charges may be assessed for such calls. See FCC's Interconnection Order at ¶¶ 1036, 1043. The Commission must re-price the Reverse Option charge, for purposes of this interconnection agreement, as the means for compensating Sprint for transporting intraMTA calls from its end users to the point of interconnection, by removing the access component of the charge. The price of the Reverse Option originally was set equal to Sprint's originating access

rates. Poag Deposition (Exhibit 3) at 84, l. 1 through 85, l. 5. Thus, the Commission should eliminate the charge in its entirety.<sup>8</sup> Alternatively, if the Commission determines that Wireless One should compensate Sprint for transporting calls from the end user to the point of interconnection, Wireless One would be willing to incorporate the \$0.004 per minute of use "additive rate" contained in the BellSouth/Vanguard interconnection agreement, subject to true up as that agreement provides.

Sprint maintains that repricing the Reverse Option charge must be reserved to a subsequent proceeding because it would affect its state-approved tariffs and revenues. However, inclusion of Wireless One's Reverse Option obligation in the interconnection agreement does not affect Sprint's state-approved tariffs any more than replacing the present tariff rates for mobile-to-land terminations with lower rates in the same interconnection agreement for which revenue recovery has not been cited as an issue. The relationship between Sprint and Wireless One simply is being modified from one based on tariff to one based on contract. Indeed, the replacement of the Reverse Option charge, which is a part of Sprint's Interconnection and Mobile Services Tariff, provision G7, in an interconnection agreement compliant with FCC pricing principles (i.e., excluding access charges), is no different than the repricing that Sprint has agreed to undertake with respect with its only other usage sensitive charges in this proceeding which formerly were subject to Sprint's Interconnection and Mobile Services Tariff, provisions G4 and G5. Tr. 259, ll. 15-22. Moreover, the Reverse Option tariff rate still will apply to Sprint's calls terminated on Wireless One's network on an interMTA basis.

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<sup>8</sup> In its previous pleadings, Wireless One requested that the Commission reduce the Reverse Option charge to \$0.00294 per minute of use, based upon Sprint's deposition testimony that access charges had been decreased by 5%. At hearing, however, Sprint's witness testified that this reduction did not apply to the area served by Wireless One. Thus, the access component of the Reverse Option charge remains at \$0.588 per minute of use and should be eliminated in its entirety. Tr. 423, ll. 4-20.

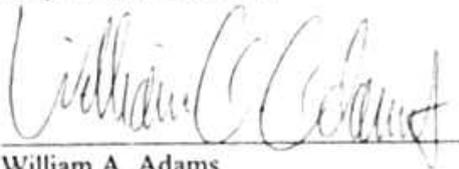
As a final alternative, because the Reverse Option charge is a term and condition of interconnection subject to this proceeding, the Commission simply could order Sprint to negotiate the appropriate level of the Reverse Option charge with Wireless One for inclusion in this agreement. In addition, because the FCC's rules clearly provide that access charges cannot be charged for intraMTA calls, the Commission must order Sprint, in such negotiations with Wireless One, to exclude originating access from the calculation of the Reverse Option charge.

*E. Agreement Language and Relief*

On this issue, Wireless One requests that the Commission adopt the language it has proposed in the agreement to resolve this issue or, as an alternative, to craft new language to conform to its order in this proceeding decreasing the Reverse Option charge or, as a second alternative, to order the parties to negotiate Reverse Option rates for this agreement that exclude an originating access component. Wireless One asks the Commission not to defer this issue to another day in another proceeding. Wireless One needs rate relief from this burdensome charge now. If, however, the Commission does defer this issue, Wireless One requests that the Commission make clear in this case that the effective date for rate relief between Wireless One and Sprint will be the date of the order in this case, and not after the date of a second proceeding is concluded. Otherwise, Sprint will have an incentive to delay completion of a second

proceeding as long as possible during which time it will continue to collect exorbitant Reverse Option revenue from Wireless One.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "William A. Adams", written over a horizontal line.

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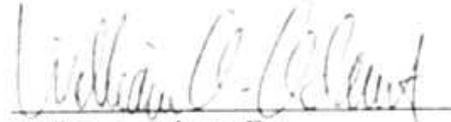
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*CERTIFICATE OF SERVICE*

I hereby certify that a copy of the foregoing Brief was served upon the following by facsimile, overnight courier or regular U.S. mail, postage prepaid, on this 9<sup>th</sup> day of December, 1997.



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